

EXHIBIT 14

July 06, 2016

1 UNITED STATES DISTRICT COURT

2 NORTHER DISTRICT OF CALIFORNIA

3 SAN JOSE DIVISION

4 CISCO SYSTEMS, INC.,

5 Plaintiff,

6 vs.

Civil Action No.

5:14-cv-5344-BLF

7 ARISTA NETWORKS, INC.,

8 Defendants.

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12
13
14 VIDEO RECORDED DEPOSITION OF EXPERT

15 DOUGLAS W. CLARK, Ph.D.

16 JULY 6, 2016

17 9:07 A.M.

18
19 50 California Street, 21st Floor

20 San Francisco, California

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22
23 REPORTED BY:

24 Mark W. Banta

25 CSR No. 6034, CRR

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09:12:38 1 A. I do not know exactly. I would guess -- report,
2 deposition, trial -- six-ish, plus or minus. If I had my
3 list I could figure out, but...

4 Q. How many times have you opined that a patent was
09:13:02 5 valid?

6 A. I want to say less than six, but not much.
7 Again, just guessing.

8 Q. So would that number be the same for questions
9 of infringement and non-infringement, or would the answer
09:13:33 10 be different?

11 A. So I have done work where I only argued
12 non-infringement and not invalidity. I'd have to look at
13 my list.

14 Q. Have you ever opined that a patent was infringed
09:14:09 15 and valid?

16 A. Infringed and valid? Yes.

17 Q. When was the last time you did that?

18 A. At least 2007, and there might be one or more
19 after that, but the one that sticks in the mind is 2007.

09:15:05 20 Q. You've submitted two expert reports in this
21 case, correct?

22 A. Yes.

23 Q. Are you currently preparing any supplemental
24 reports?

09:15:15 25 A. I beg your pardon. I am not.

09:15:18 1 Q. Do your reports express your full and correct
2 expert opinions that you expect to express at trial?

3 A. The first one, the big one, suffers from having
4 been submitted before the Court's claim construction
09:15:37 5 order, so I would expect to modify some opinions based on
6 that order.

7 Q. What do you mean, you would expect to modify?

8 A. Well, I would -- I would expect to testify at
9 trial using the Court's claim constructions and not some
09:15:58 10 other claim constructions.

11 Q. But you haven't put forth any report that
12 applies the Court's claim constructions for purposes of
13 your invalidity analysis; true?

14 MR. ROSEN: Objection. Vague.

09:16:12 15 THE WITNESS: The -- the little report was after
16 the claim construction order, so that did respond to
17 the...

18 BY MR. JAFFE:

19 Q. Right. And so my question was a little more
09:16:24 20 specific, which is: You haven't put forth any report
21 that applies the Court's claim construction for purposes
22 of your invalidity analysis?

23 A. That's correct.

24 MR. ROSEN: Objection. Vague.

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09:16:38 1 BY MR. JAFFE:

2 Q. Putting aside the claim construction issue which
3 we'll come back to in one second, apart from that issue,
4 do your reports express your full and correct opinions
09:16:51 5 that you expect -- expect to address at trial?

6 A. Yes.

7 Q. Are there any errors that you're aware of in
8 your reports, sitting here today, that you want to
9 correct?

09:17:07 10 A. I'm aware of a handful of insignificant typos,
11 but nothing substantial.

12 Q. There's a binder sitting in front of you that
13 has "Dr. Clark" in a nice label on it. What is that?

14 A. That's a binder that Arista's attorneys prepared
09:17:44 15 for me containing my report and some other things.

16 Q. Does that have your CV and list of cases in it?

17 A. It has my CV, but I think it does not have my
18 list of cases. Let me see.

19 It does not have the list of cases.

09:18:36 20 Q. Okay. So you have your invalidity report
21 sitting in front of you, right?

22 A. I do.

23 MR. JAFFE: Okay. Why don't we go ahead and
24 mark that as an exhibit.

09:19:21 25 And I think this will be Exhibit -- do you know

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09:19:28 1 what exhibit?

2 THE REPORTER: No.

3 MR. JAFFE: No? I was hoping for a shortcut.

4 So we'll make this 3001. I'm pretty sure it was marked

09:19:37 5 before.

6 (Exhibit 3001 marked.)

7 BY MR. JAFFE:

8 Q. Dr. Clark, can you please take a look at what

9 I've now marked as Exhibit 3001 and let me know if you

09:20:09 10 recognize it.

11 A. That appears to be my expert report on

12 invalidity with Exhibits A, B, C, D and E.

13 Q. Now that we have your expert -- opening expert

14 report on invalidity in front of us, this expert report

09:21:01 15 contains all your opinions on invalidity that you're

16 prepared to discuss today, correct?

17 A. No --

18 MR. ROSEN: Objection. Vague.

19 THE WITNESS: No, because I'm prepared to

09:21:14 20 discuss the -- I'm prepared to offer opinions that are

21 informed by the Court's claim construction.

22 BY MR. JAFFE:

23 Q. What report are those opinions expressed in?

24 A. They are not expressed in any report.

09:21:36 25 Q. So am I correct in understanding that you have

09:21:40 1 some opinions on invalidity applying the Court's claim
2 construction that are not expressed in any report, but
3 you want to talk about them today and intend to express
4 them at some later date?

09:21:53 5 MR. ROSEN: Objection. Misstates testimony.
6 Vague.

7 THE WITNESS: My understanding is that that's --
8 that is my obligation at trial to provide opinions that
9 don't use some other claim construction than the Court's,
09:22:08 10 and I was -- because of the schedule, I was -- I
11 submitted this before the Court's claim construction
12 order, so I don't know what else to do.

13 BY MR. JAFFE:

14 Q. You submitted a rebuttal report -- report that
09:22:28 15 applied the Court's claim construction, right?

16 A. Yes.

17 Q. And in that report did you address your
18 invalidity analysis?

19 MR. ROSEN: Objection. Vague.

09:22:39 20 THE WITNESS: No.

21 BY MR. JAFFE:

22 Q. Why not?

23 A. I was not asked to.

24 Q. When do you expect to put forth a report that
09:22:49 25 expresses your opinions applying the Court's claim

09:22:53

1 construction --

2 MR. ROSEN: Objection. Vague.

3 MR. JAFFE: Sorry. I'm not done with my

4 question.

09:22:59

5 Q. On validity.

6 A. I will prepare any report I'm asked to prepare,

7 but I have not been asked and I am not working on one

8 now.

09:23:11

9 Q. If I wanted to understand the scope of your
10 opinions, before I sat down to today's deposition, on
11 invalidity, applying the Court's claim construction, how
12 would I have done that?

13 MR. ROSEN: Objection. Vague. Misstates law.

14 THE WITNESS: Would you ask again?

09:23:32

15 BY MR. JAFFE:

16 Q. Sure. My question is: If I wanted to
17 understand what your opinions were on invalidity applying
18 the Court's claim construction before I sat down to
19 today's deposition, how would I be able to do that?

09:23:46

20 MR. ROSEN: Same objections.

21 THE WITNESS: You would not be.

22 BY MR. JAFFE:

23 Q. I would not be able to do that?

24 A. You would not be able to do that.

09:23:56

25 Q. Okay. Let's talk about the opinions that you

09:24:02 1 have put forth in the report. Now, for purposes of my
2 next few questions, I want to talk about the opinions as
3 expressed in your report. Do you understand me?

4 A. I do.

09:24:16 5 Q. Okay. Under the opinions expressed in your only
6 expert report that relates to validity, you have no
7 opinion that any prior art reference invalidates any
8 asserted claim of the '526 patent under the Court's
9 constructions, correct?

09:24:35 10 MR. ROSEN: Objection. Compound. Vague.

11 THE WITNESS: I think that is right.

12 BY MR. JAFFE:

13 Q. Now let's take a look at your report. How much
14 time did you spend preparing your report? And I'm
09:25:32 15 referring to Exhibit 3001.

16 A. Do you mean -- let's see, what do you mean
17 exactly, "prepare"?

18 Q. I mean prepare the report, from Arista's counsel
19 engaging you until that document was produced in this
09:25:50 20 litigation.

21 MR. ROSEN: Objection. Vague.

22 THE WITNESS: I would estimate 150 hours.

23 BY MR. JAFFE:

24 Q. How many hours did you spend preparing your
09:26:13 25 rebuttal report?

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09:26:23 1 A. I would guess 10.

2 Q. How many hours did you spend preparing for
3 today's deposition?

4 A. I spent all of yesterday, half of July 4th with
09:26:42 5 the attorneys, and prepared by myself for the previous
6 couple of weeks. I -- probably 20-ish hours.

7 Q. We've talked about the amount of time that you
8 spent preparing your opening report, your rebuttal
9 report, and preparing for today's deposition which, based
09:27:16 10 on my elementary school arithmetic, totals up to about
11 180 hours. Is that the correct amount of time that you
12 have spent working on this matter, approximately?

13 A. Yes.

14 Q. Looking at your opening report, in terms of the
09:27:45 15 drafting process, who put fingers to keyboard in creating
16 it? Was it something that you wrote or was it something
17 that there was a draft that was exchanged? And I don't
18 want the content of any drafts, I'm just wondering about
19 the general process.

09:27:59 20 MR. ROSEN: Objection; compound. Objection;
21 vague. And I'm also going to object and instruct the
22 witness not to divulge any conversations with counsel.

23 THE WITNESS: It was an exchange of drafts, I
24 would say a vigorous exchange of drafts with many --
09:28:26 25 with -- ask your question again, please.

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13:42:38 1 more certain situation, namely, that I assume it and it's
2 actually true, I'm right, there's no contest, if that's
3 really true, then these do not invalidate or -- the
4 patent.

13:43:04 5 BY MR. JAFFE:

6 Q. So is that a yes?

7 MR. ROSEN: Same objections.

8 THE WITNESS: It's what I said.

9 MR. JAFFE: Can you read my last question back,
13:43:23 10 please?

11 (Question read as follows:

12 "Q. If you assume that the asserted claims
13 of the '526 patent require every single element
14 of the tree to have a corresponding at least one
15 command action value, none of the references
16 that you've identified in your report anticipate
17 or render obvious the asserted claims; true?")

18 MR. ROSEN: Same objections.

19 THE WITNESS: Am I asked that again?

13:44:03 20 BY MR. JAFFE:

21 Q. Yes.

22 A. So yes, but I'd want the assumption strengthened
23 to exclude competing interpretations that might win out.

24 BY MR. JAFFE:

13:44:14 25 Q. So maybe we're getting hung up on --

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13:44:16 1 A. I think so.

2 Q. -- what assuming means.

3 A. Yeah. Maybe.

4 Q. What is your understanding of when you assume

13:44:21 5 something?

6 A. So if -- if...

7 MR. ROSEN: And I object to the question as
8 vague.

9 THE WITNESS: Yes, I've given you too hard a
10 time. I think you -- you're -- assume is -- assume that
11 it's really true, it's really -- assume X. Then what is
12 a consequence of X? That -- I don't -- I don't need any
13 contingencies.

14 BY MR. JAFFE:

13:45:24 15 Q. Okay. Let me try this again. If you assume
16 that the asserted claims of the '526 patent require every
17 single element of the tree to have a corresponding at
18 least one command action value, none of the references
19 that you've identified in your report anticipate or
13:45:49 20 render obvious the asserted claims; true?

21 MR. ROSEN: Objection. Asked and answered.
22 Vague. Compound.

23 THE WITNESS: Under that assumption, that is
24 true.

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1 BY MR. JAFFE:

2 Q. Okay. Have you reviewed Dr. Chase's
3 non-infringement expert report?

4 A. Lightly, I would say.

5 Q. When did you review it?

6 A. Shortly after it was produced. Oh, wait. Yes,
7 I think that's fair.

8 Q. You didn't review any drafts?

9 A. No.

10 Q. Have you spoken with Dr. Chase?

11 A. I -- we may have interviewed him for a job when
12 I was at Princeton. The name is familiar and a lot of
13 smart youngsters come through and maybe I've spoken to
14 him in that context, but not about this case.

15 Q. You haven't spoken to Dr. Chase in the context
16 of this case?

17 A. Not at all.

18 Q. Have you spoken to anyone else in forming your
19 opinions, other than lawyers?

20 A. No.

21 Q. Did you agree with Dr. Chase's report?

22 A. I did not read it --

23 MR. ROSEN: Objection. Vague. Compound.

24 THE WITNESS: I did not read it closely enough
25 to come to an opinion.

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14:43:15 1 Q. In your understanding, that's the translation
2 table that's referred to in column 4?

3 A. Yes.

14:43:29 4 Q. What -- in terms of what is in the table, what
5 information is contained in the translation table
6 referred to in column 4, lines 30 through 36, of the '526
7 patent?

8 MR. ROSEN: Objection. Vague.

9 THE WITNESS: So the -- the end of that
14:44:22 10 paragraph in column 4 says: The command key is mapped to
11 one of the translators in an attempt to provide a command
12 to the corresponding resource.

13 So I'm thinking of what goes in and what comes
14 out. What goes in is a command key which might just be
14:44:41 15 an index in the table. And what comes out is a
16 translator or perhaps a translation of the -- of the
17 generic command that -- possibly partial generic command
18 that... that you just looked at the last valid word of.

19 BY MR. JAFFE:

14:45:08 20 Q. What's the purpose of this translation table in
21 column 4?

22 MR. ROSEN: Objection. Calls for speculation.

23 THE WITNESS: This is not very well explained, I
24 would say, but somehow the command key has to -- has to
14:45:45 25 provoke the actual command to the corresponding resource.

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14:45:54 1 It could be that there's a translator for every command
2 key. Maybe that's likely, even. And I guess -- well, I
3 wouldn't want to speculate. So it's just -- it's -- the
4 language here is not that clear about what this thing
14:46:27 5 does.

6 BY MR. JAFFE:

7 Q. The Court's claim construction order issued on
8 June 15th, right?

9 A. I believe you.

10 Q. What date did you provide your rebuttal report?

11 A. I forget.

12 Q. Is that included in the binder sitting in front
13 of you?

14 A. Yes.

14:47:26 15 Q. Okay. Do you want to look and see what date you
16 provided your rebuttal report?

17 A. Yes, I do. Signed on the 17th.

18 Q. Did you apply the Court's claim constructions in
19 your rebuttal report?

14:47:59 20 A. Yes.

21 Q. So you had sufficient time to consider the
22 Court's claim construction opinions to opine under the
23 Court's constructions in your rebuttal report, right?

24 A. Yes.

14:48:14 25 Q. You didn't discuss your validity opinions,

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14:48:16 1 though, in your rebuttal report, right?

2 A. Right.

3 Q. Okay. Based on the discussion that we had
4 today, is it fair to say that you don't actually have any
14:48:31 5 invalidity opinions under the Court's constructions,
6 sitting here today?

7 MR. ROSEN: Objection. Misstates testimony.

8 THE WITNESS: Could we use -- do the assume
9 thing again? Not taking all the time as before, but can
14:49:05 10 I assume that my interpretation of the Court's claim
11 construction is correct?

12 BY MR. JAFFE:

13 Q. If you assume -- well, actually, I'm asking a
14 little bit of a different question.

14:49:27 15 In your expert report you expressed alternative
16 opinions under Cisco's proposed construction and Arista's
17 proposed constructions, right?

18 A. Yes.

19 Q. You didn't opine under the Court's constructions
14:49:40 20 because those didn't exist yet. Right?

21 A. Except where they -- they might have matched one
22 of the other constructions or were extremely close.

23 Q. Otherwise, yes?

24 A. Otherwise, yes.

14:49:55 25 Q. Now that we have the Court's claim construction

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14:49:57 1 order, you don't have any invalidity opinions sitting
2 here today under the Court's claim construction order,
3 right?

4 MR. ROSEN: Objection. Vague. Misstates prior
14:50:08 5 testimony.

6 THE WITNESS: I want to say if I'm right in my
7 interpretation of the Court's claim constructions, then I
8 don't.

9 BY MR. JAFFE:

14:50:26 10 Q. And when you're talking about your
11 interpretation of the Court's claim construction, you're
12 referring to the caveat in your expert report in
13 paragraph 77? Is that right?

14 A. I lost the front of the question.

14:50:55 15 Q. When you're talking about your interpretation of
16 the Court's claim construction, you're referring to the
17 caveat that you expressed in paragraph 77 of your opening
18 expert report; is that right?

19 A. Yes.

14:51:19 20 Q. So to recap, if you assume that the Court's
21 claim construction requires every single element of the
22 tree to have a corresponding at least one command action
23 value, under the Court's claim construction, you don't
24 have any invalidity opinions, right?

14:51:37 25 MR. ROSEN: Objection. Vague. Misstates prior

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14:51:38 1 testimony. Compound.

2 THE WITNESS: That is right.

3 BY MR. JAFFE:

4 Q. Okay. If you can turn back to the '526 patent,
14:51:52 5 what are the management programs identified in the '526
6 patent for the preferred embodiment?

7 A. I read in column 3 management programs
8 implemented, for example, by a different OAM, which is
9 what, operation -- operating administration and
14:52:38 10 monitoring tools, such as realtime monitoring, yes.
11 Programs may be executed within the processor or
12 externally as external agents using a prescribed
13 application programming interface. So things like that.
14 Things like operation -- operating administration and
14:52:58 15 monitoring and realtime monitoring.

16 Q. So why don't you turn to Part A of the appendix
17 of the '526 patent.

18 A. Okay.

19 Q. Do you see the third row of the table under New
14:53:18 20 Syntax, it says "watch acb globals"?

21 A. I see two of those, actually.

22 Q. For the first one that's in the third row, I
23 was --

24 A. There's one there and there's one -- I'm
14:53:39 25 indicating two different watch acb globals.